IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 418 of 2005

GOPIKISHAN
V/S
KAILASH CHANDRA & ORS

Mr. RANJEET JOSHI, for the appellant / petitioner

Date of Order : 29.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

As directed on 4.8.2006, learned counsel for the petitioner informed that no other appeal has been filed by any body against the impugned decree.

Heard learned counsel for the appellant and perused the impugned judgment. The finding recorded by the learned court below about "Thala" to have been found to have been purchased by his father, being the exclusive property of the defendant Kailash Chandra, not capable of the partition, at the behest of the plaintiff, is a pure finding of fact, and in my view is not vitiated on any of the grounds available under Section 100 C.P.C.

Then coming to the question of share, learned trial court had found the plaintiffs Gopi Kishan and Bhanwari Devi and the defendant Kailash Chandra each to be entitled to 1/3rd share in the property and the appellate court has interfered with this finding and has found the two

plaintiffs to be connectively entitled to 1/2 share and the defendant Kailash Chandra to be entitled to 1/2 share. A look at the impugned judgment shows that the plaintiffs in the suit itself had claimed 1/2 share in the property obviously collectively. As against which according to the decree of the learned trial court, the plaintiffs were to get 2/3rd share instead of 1/2 share and therefore, the decree has been modified. I also find from the judgments that there were two lines in the pedigree, inasmuch as, Banshidhar was a common ancestor who had two sons Mangi Lal and Sunder Lal. The plaintiffs are son and daughter of Sunder Lal while Kailash Chandra is son of Mangi Lal. Obviously, therefore, the plaintiffs who are brother and sister (siblings) would be entitled to only ½ share in the property through Sunder Lal and other 1/2 share has to go to Kailash Chandra and could not be decreed in the ratio as done by the trial court.

Thus, I do not find the present appeal to be involving any substantial question of law and the same is therefore dismissed summarily.

(N P GUPTA),J.

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